

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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JAN KONOPCA,

Civil No:

Plaintiff,

**COMPLAINT FOR
VIOLATIONS OF THE
TELEPHONE CONSUMER
PROTECTION ACT**

-against-

DEMAND FOR JURY TRIAL

M&M BEDDING, LLC d/b/a EASY REST
ADJUSTABLE SLEEP SYSTEMS,

Defendant.
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Plaintiff JAN KONOPCA ("Plaintiff"), by and through his attorneys, Marcus & Zelman, LLC, as and for his Complaint against the Defendants M&M Bedding, LLC d/b/a Easy Rest Adjustable Sleep Systems respectfully sets forth, complains and alleges, upon information and belief, the following:

INTRODUCTION/PRELIMINARY STATEMENT

1. Plaintiff brings this action on his own behalf for damages and declaratory and injunctive relief arising from the Defendants' violation(s) under Title 47 of the United States Code, §227 commonly known as the Telephone Consumer Protection Act (TCPA).

PARTIES

2. Plaintiff is a resident of the State of New Jersey, County of Monmouth, residing in Long Branch, New Jersey.
3. Defendant M&M Bedding, LLC d/b/a Easy Rest Adjustable Sleep Systems is a limited liability company with its principal place of business located at 6110

Holabird Ave, Baltimore, MD 21224.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this matter pursuant to 28 USC §1331.
5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

ALLEGATIONS

6. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered “1” through “5” herein with the same force and effect as if the same were set forth at length herein.
7. Plaintiff is the sole subscriber of the Sprint account bearing the phone number of (732)222-2222, and has been the sole subscriber of that account at all times relevant hereto.
8. Plaintiff is the sole party financially responsible for the payment of the Sprint account bearing the phone number of (732)222-2222, and has been the sole party financially responsible for that account at all times relevant hereto.
9. Plaintiff is the regular and sole user of the cellular phone number (732)222-2222, and has been the regular and sole user of that phone number at all times relevant hereto.
10. On information and belief, on a date better known to Defendants, Defendants began its campaign of communicating with the Plaintiff via the use of an automated telephone dialing system throughout the past four years by calling his cell phone number of (732)222-2222 numerous times.
11. Defendant specifically used an automated telephone dialing system or a predictive

dialer to call the Plaintiff on his cell phone on February 14, 2012 and February 15, 2012, amongst numerous other dates.

12. The Defendants called from numerous phone numbers, including 732-945-4403, all of which numbers belongs to Defendants.

13. On these dates, the Defendant would typically call the Plaintiff's cellular phone.

When the Plaintiff would answer, the Plaintiff would hear silence, followed by an electronic tone, after which point a customer service representative would be connected to the Plaintiff, which is indicative of predictive dialing.

14. Defendant's customer service representatives would further leave voicemails on the Plaintiff's cellular phone, which would begin with a pause, then an electronic tone, then a customer service being connected to the line, stating:

"Hello, Thomas? Thomas? Hello?"

or

"Hello, Thomas Hansen? Good afternoon, Mr. Hansen? Hello, Mr. Hansen? Hello?"

or

"Hello. Hello. Hello?"

15. On a number of occasions, Plaintiff called back the phone number 732-945-4403 to instruct the Defendant to cease calling his cellular phone, and was connected to an individual representing herself as a representative for Easy Rest Adjustable Sleep Systems.

16. The Plaintiff never gave the Defendants his prior, express permission to call his cell phone via the use of an automated telephone dialing system or a predictive dialer
17. Plaintiff had no wish to be contacted on his cell phone via the use of an autodialer, and expressly directed Defendants to stop calling his cell phone number on numerous occasions.
18. By placing auto-dialed calls and prerecorded messages to the Plaintiff's cell phone, the Defendants violated 47 USC §227(b)(A)(iii) which prohibits using any automated telephone dialing system or an artificial prerecorded voice to any telephone number assigned to a cellular telephone service when calling to the plaintiff's cell phone.
19. The Defendant therefore willfully violated the TCPA numerous times by placing calls to the Plaintiff's cell phone without his prior, express consent.
20. Plaintiff has suffered actual damages because the Defendant's calls to his cell phone unnecessarily reduced the number of minutes he is allotted per month in his cell phone plan, which has limited minutes as a part of his cellular rate plan.

DEMAND FOR TRIAL BY JURY

21. Plaintiff hereby respectfully requests a trial by jury for all claims and issues in its Complaint to which it is or may be entitled to a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendants as follows:

A. For mandatory statutory damages of \$500 each provided and pursuant to 47 USC §227(c)(2)(G)(3)(B), for all calls placed to the Plaintiff's cellular phone;

B. Plaintiff requests enhanced trebled damages of \$1,500 to be awarded to the Plaintiff per call, in accordance with the TCPA, for the Defendants' willful violations of the TCPA;

C. For any such other and further relief, as well as further costs, expenses and disbursements of this action, as this Court may deem just and proper.

Dated: New York, New York
February 10, 2016

Respectfully submitted,

MARCUS & ZELMAN, P.C.

By: /s/ Yitzchak Zelman
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